



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Arrow, Inc.
File: B-227103
Date: May 22, 1987

DIGEST

Procuring agency may not consider late bid modification where the modification was received and time/date stamped after the bid opening date. Fact that late modification would make bid low does not permit acceptance of the modification where the bid is not otherwise low.

DECISION

Arrow, Inc., protests the rejection of its late telegraphic bid modification under invitation for bids (IFB) No. DTFA06-87-B-30028, issued by the Federal Aviation Administration (FAA), Department of Transportation, for the construction of an airport surveillance radar facility.

We dismiss the protest pursuant to section 21.3(f) of our Bid Protest Regulations because the protest is clearly without legal merit and therefore does not require the submission of an agency report. 4 C.F.R. § 21.3(f) (1986).

Bid opening was held on April 10, 1987, at 2 p.m. Arrow submitted a timely but not low bid by the bid opening. On April 9, Arrow sent, via Western Union mailgram, a telegraphic modification reducing its bid price to FAA. Since the FAA received the modification on April 13, 1987, at 10:40 a.m., as evidenced by FAA's time/date stamp, the contracting officer did not consider it, even though it would have made Arrow the low bidder.

Late bid modifications can only be considered if sent by registered or certified mail not later than 5 days before the bid receipt date or if it is determined that late receipt was due solely to government mishandling after receipt at the government installation. Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.304-1(a) (1986). The time of receipt at the installation can only be established by the agency's time/date stamp on the bid wrapper or other

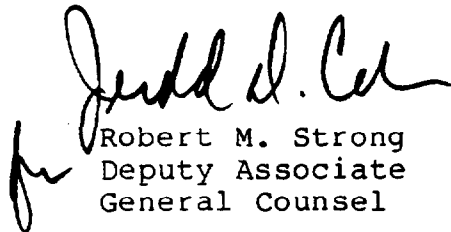
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documentary evidence maintained by the installation. FAR, 48 C.F.R. § 14.304-1(c).

Since the modification was time/date stamped 3 days after bid opening, Arrow does not dispute that its late modification does not fall under the foregoing exceptions to the rule that late bid modifications must be rejected. However, Arrow argues that FAR, 48 C.F.R. § 14.304-1(d), permits the FAA to consider its modification because the modification makes the terms of its offer more favorable to the government.

However, this regulation only allows the government to accept more favorable terms from the otherwise low responsive responsible bidder, who is in line for award. The reason for this exception is that if the government elects to consider a late modification received from an otherwise acceptable low bidder, other bidders may not complain because their relative standing is not affected. See Colorado Elevator Service, Inc., B-206950.2, May 6, 1982, 82-1 C.P.D. ¶ 434. In this case, Arrow was not the otherwise successful low bidder; only the late modification made it the low bidder. Therefore, FAA acted properly in not considering the late modification.

The protest is dismissed.


Robert M. Strong
Deputy Associate
General Counsel